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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/647,657	08/25/2003	William Cohn	301492.1047-119	2131

7590 12/03/2004

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EXAMINER

JACKSON, GARY

ART UNIT PAPER NUMBER

3731

DATE MAILED: 12/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/647,657

Applicant(s)

COHN ET AL.

Examiner

Gary Jackson

Art Unit

3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date Jan. 22, 2004.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_

**DETAILED ACTION*****Double Patenting***

Claims 1-14 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-32 of U.S. Patent No. 6,610,071. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 1 is broadened by removing a method step of particularly placing the suture through a cuff in the prosthetic device. It would have been within the purview of one having ordinary skill in the art to broaden claim 1, by not inserting the suture into the cuff per se.

Allowance of this claim would extend the "right to exclude" already granted in the patent claim 1. Likewise claim 2, it would have been within the purview of one having ordinary skill in the art to broaden the suturing device by removing the plurality suture pads.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ovil (US Patent 4,702,250) or Phillips (US Patent 4,932,965) in view of Goldberg (US 2,591,063). The patent to Ovil suggests the method steps as recited in the claims above. Ovil further suggest color-coding to visually distinguish the sutures. Phillips teaches color-coding strands used for securing artificial valves as disclosed by applicants. Goldberg teaches using a double strand

Art Unit: 3731

suture/needle for suturing and teaches that the double strands maybe visually distinguishable.

See Goldberg above.

It would have been within the purview of one having ordinary skill in the art to provide Ovil or Phillips with double strand suture/needle as taught by Goldberg to secure a prosthetic valve in the manner recited

Claims 1-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meshalkin (Soviet Union 513,696) in view Phillips (US Patent 4,932,965). Meshalkin discloses a suturing device substantially as recited, however it lacks clear recitations of visual indicators for identification purposes. Phillips suggests color-coding strands so as to be distinguishable from each when being tied together. Meshalkin discloses a suturing device adapted to secure portions of tissue together. The patent to Phillips recognizes the same problem of identifying sutures as the applicant and solves the problem by color-coding the sutures. It would have been obvious to one having ordinary skill in the art to provide Meshalkin with visual distinguishable sutures as taught by Phillips. It further would have been obvious to secure the valve disclosed in Phillips with a color-coded suture of Meshalkin and Phillips combination.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary Jackson whose telephone number is (571) 272-4697. The examiner can normally be reached on Mon.-Thurs. 7:30 am to 6:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Antoine Nguyen can be reached on (571) 272-4693. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3731

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Gary Jackson  
Primary Examiner  
Art Unit 3731

A handwritten signature in cursive script that reads "Gary Jackson".

gj  
November 28, 2004